

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GILBERTO CRUZ SILVA,) CASE NO. SA CV 13-1809-JFW (PJW)
Petitioner,)
v.) ORDER SUMMARILY DISMISSING HABEAS
SECRETARY, CALIFORNIA DEPARTMENT) CORPUS PETITION WITHOUT PREJUDICE
OF CORRECTIONS,)
Respondent.)

)

Before the Court is a habeas corpus petition filed by a state prisoner challenging 2010 criminal convictions in the Orange County Superior Court. As Petitioner's counsel pointed out in the petition (and agreed to at a hearing), however, the case is still pending in the state court. Following his convictions, Petitioner appealed, claiming, among other things, that the trial court erred when it denied his motion for new counsel. The appellate court remanded that issue to the trial court for further proceedings. According to Petitioner and Respondent's counsel, in the interim, the trial court recently denied the motion, again, and Petitioner has appealed the trial court's decision to the state appellate court.

1 Because this case is still pending in the state court,
2 Petitioner's habeas corpus petition in this court is premature. See
3 *Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983) ("When, as in
4 the present case, an appeal of a state criminal conviction is pending,
5 a would-be habeas corpus petitioner must await the outcome of his
6 appeal before his state remedies are exhausted, even where the issue
7 to be challenged in the writ of habeas corpus has been finally settled
8 in the state courts."). It is entirely possible that the state courts
9 could determine that Petitioner is entitled to a new trial, thus
10 mooting his claim in this court. Obviously, it would be a tremendous
11 waste of judicial resources to have this Court reach the merits of his
12 claims and then learn that the state court has ordered a new trial.
13 For these reasons, the petition is dismissed without prejudice to
14 refile once the state court proceedings have been concluded.

IT IS SO ORDERED.

DATED: May 16, 2014.

JOHN F. WALTER
UNITED STATES DISTRICT JUDGE

Presented by:

Patrick J. Walsh

PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE